



U.S. Department of Justice

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April 17, 2021

BY ECF

Honorable Peggy Kuo
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Scott, et al. v. Quay, et al.*,
Civil Action No. 19-CV-01075 (ERK) (PK)

Dear Judge Kuo:

In accordance with Judge Korman's individual motion practice rules, which provide that non-dispositive motions should be made to the assigned Magistrate Judge, Defendants respectfully submit this request for an extension *nunc pro tunc* to April 30, 2021, of the date by which Defendants are to serve their answer to the amended complaint. Plaintiffs' counsel have graciously consented to this request.

In lieu of an answer, Defendant Quay submitted a letter to Judge Brodie (to whom this case was assigned at the time) requesting a pre-motion conference for his anticipated motion to dismiss the Complaint.¹ Dkt. #14. The schedule that was agreed upon and so-ordered provided first for service of an amended complaint by November 15, 2019, and then briefing of the motion to dismiss. *See* Order dated 8/8/19. No provision was made for the date of an answer in the event that the motion to dismiss was denied.

After the amended complaint was filed (Dkt. #29),² Magistrate Judge Gold denied

¹ The only defendant named in the complaint was Warden Herman E. Quay. *See* Dkt. #1.

² The amended complaint added two defendants (Facilities Manager John Maffeo and the United States of America) and asserted claims under the Federal Torts Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b)(1) and 2671 *et seq.*, as well as constitutional claims under *Bivens v. Six Unknown Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

Defendants' request that discovery be deferred until after the motion to dismiss was decided. *See* Dkt. #41. Discovery then proceeded, and continues.

Defendants' fully briefed motion to dismiss was filed on May 8, 2020. *See* Dkt. #65-#69. Following referral of the motion, Magistrate Judge Gold issued a Report & Recommendation on November 16, 2020, which recommended granting the motion as to the *Bivens* claims, and denying it with respect to the FTCA claims. Judge Korman adopted the Report & Recommendation on March 22, 2021.

As the result of changes in staffing and the focus on the ongoing discovery, Defendants' counsel overlooked the need to file an answer to the amended complaint after the adoption of the Report & Recommendation that denied in part the motion to dismiss. It is not precisely clear how much time remained for Defendants to file their answer. However, it is overdue.

We apologize for any inconvenience to the Court or Plaintiffs.

Thank you for Your Honor's consideration of this request.

Respectfully submitted,

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cc: Plaintiffs' Counsel of Record (by ECF)